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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10-90; DA 13-284]

Service Obligations for Connect America Phase II and Determining Who Is an Unsubsidized Competitor

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission seeks comment on how it will determine which census blocks are served by an unsubsidized competitor, how price cap carriers will demonstrate they are meeting the Commission's requirements for reasonable comparability, and what other providers will need to demonstrate to be deemed unsubsidized competitors.

DATES: Comments are due on or before March 28, 2013 and reply comments are due on or before April 12, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 10-90, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Ryan Yates, Wireline Competition Bureau, (202) 418-0886 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's Public Notice in WC Docket No. 10-90, and DA 13-284, released February 26, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. These documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's web site at <http://www.fcc.gov>.

I. INTRODUCTION

1. In this Public Notice, the Wireline Competition Bureau (Bureau) seeks to further develop the record on a number of issues relating to implementation of Connect America Phase II support. Specifically, the Bureau seeks comment on how it will determine which census blocks are served by an unsubsidized competitor, how price cap carriers will demonstrate they are meeting the Commission's requirements for reasonable comparability, and what other providers will need to demonstrate to be deemed unsubsidized competitors.

II. DISCUSSION

2. Unserved Areas. The Commission directed the Bureau to determine what areas the forward looking cost model should treat as unserved by an unsubsidized competitor "as of a specified future date as close as possible to the completion of the model." To that end, the next version of the Connect America Cost Model will incorporate June 2012 State Broadband Initiative (SBI) data to assist in determining what areas have access to broadband-capable infrastructure meeting specified speed thresholds. We recognize that in some particular instances, it is possible that providers have completed network expansion into unserved areas since submitting the June 2012 SBI data, but it is necessary now

to incorporate an existing nationwide data set into the next version of the model, which currently is under development.

3. The Bureau seeks to further develop the record on what speed threshold in the June 2012 SBI data should be utilized as a proxy for 4 Mbps/1 Mbps when the Bureau identifies those census blocks that are served by an unsubsidized competitor meeting the specified speed requirement in the model. In the Phase I context, several commenters argue that using 3 Mbps/768 kbps as a proxy for 4 Mbps/1Mbps excludes some areas from support even though those areas in fact lack 4 Mbps/1 Mbps service. For purposes of Phase II, should the model treat an area as unserved if it is shown on the National Broadband Map as lacking broadband with speeds of at least 6 Mbps/1.5 Mbps, instead of using 3 Mbps/768 kbps as a proxy? That would presumably result in a greater number of census blocks becoming eligible for funding under Phase II than a 3 Mbps/768 kbps threshold. Commenters are encouraged to address the implications of using the National Broadband Map data regarding availability of broadband providing at least a 6 Mbps/1.5 Mbps speed to identify census blocks that would be deemed served by an unsubsidized competitor under Phase II. If we were to determine the presence of an unsubsidized competitor based on a 6 Mbps/1.5 Mbps threshold, to create parity between unsubsidized competitors and Phase II buildout requirements, should we also require that Phase II support recipients be required to provide broadband with speeds of 6 Mbps/1.5 Mbps to all supported locations? This would prevent a scenario in which a carrier could use Phase II funds to overbuild an existing 4 Mbps/1 Mbps network with its own 4 Mbps/1 Mbps network.

4. To the extent any interested parties wish to bring to our attention any information they believe should supplement the reported June SBI 2012 data, they are invited to submit comments by the deadline specified for this Public Notice. We particularly encourage input from state SBI grantees and other state authorities that may have relevant information.

5. For ease of administration, the Bureau proposes to exclude from support calculations in the adopted model any census block that is served by a cable broadband provider that provides service

meeting the defined speed threshold, with that rebuttable presumption subject to challenge in a challenge process. Given the wide variance in service offerings from fixed wireless providers, we do not propose to establish a similar presumption for fixed wireless providers. Instead, we propose to address whether a fixed wireless providers meets the requirements to be an unsubsidized competitor in a challenge process. A fixed wireless provider could demonstrate it is an unsubsidized competitor by making an affirmative showing that it meets the necessary speed, latency, capacity, and price criteria. That affirmative showing would be subject to rebuttal by other parties. We seek comment on this proposal. Should mobile providers also be allowed to participate in the challenge process, giving them the opportunity to qualify as unsubsidized competitors and exclude areas from support if they are able to meet the performance and pricing requirements?

6. We seek comment on whether determinations in the challenge process of whether an unsubsidized competitor meets the specified service requirements (speed, latency, usage, price) should be based on a company's offerings as of June 30, 2012, or some later date. Alternatives could include the date on which we release an order adopting the forward looking model, or 30 days prior to that release. We seek comment on these alternatives.

7. Pricing and Usage Allowances. We need to specify pricing and associated minimum usage allowances that will apply to price cap carriers that make a statewide commitment to offer voice and extend broadband in exchange for model-determined support for a period of five years. We also need to specify what is required for another provider to be deemed an unsubsidized competitor that would preclude an area from receiving any support.

8. With respect to pricing, we seek to further develop the record on a proposal to presume that "a broadband provider that offers national pricing for its broadband service offerings is offering those services in rural and urban areas at reasonably comparable rates." Should a Phase II recipient be allowed to demonstrate that its rates are reasonably comparable between urban and rural areas by showing that it offers the same rates, terms, and conditions on a nationwide basis? Would such a presumption be a

reasonable way to implement the statutory goal of reasonably comparable rates, while implementing Phase II quickly? Should we specify a level at which a provider's rate is too high to be considered reasonable, even if the provider offers the same rate in both urban and rural areas?

9. Should the presumption apply if a carrier offered different pricing plans in different regions of the country, so long as its rates are uniform within a region across both rural and urban areas? Should such a presumption apply for carriers that operate only in one state? In the latter case, would it be sufficient if the provider offered uniform pricing within its footprint, so long as that included urban areas? If we were to take such an approach, consistent with our proposal for the urban rate survey, we propose to define "urban" as all 2010 Census urban areas and urban clusters that sit within a Metropolitan Statistical Area. We seek comment on this proposal.

10. The Bureau has proposed an urban rate survey instrument to gather data relating to fixed voice and fixed broadband prices and associated usage allowances, if any, in the urban areas, but we do not anticipate those data will be available by the time the Bureau implements Phase II in the months ahead. In the absence of data from a rate survey, should we establish an interim reasonable comparability benchmark that a competitive provider would need to meet in order to be deemed an unsubsidized competitor? The Bureau recently sought comment on potential benchmarks that could be used for the Remote Areas Fund, at least on an interim basis until rate survey data become available. We now seek comment on benchmarks to use for determining who is an unsubsidized competitor in the near term for Phase II implementation in areas that will not be served by the Remote Areas Fund.

11. In particular, the Commission's prior reasonable comparability benchmark for voice service for non-rural carriers was \$36.52. Would it be reasonable to presume any provider offering voice service at or below \$37 meets the reasonable comparability requirement for voice service, at least for purposes of determining whether a particular census block should be excluded from the state-level offer of support?

12. We note that several large fixed terrestrial providers offer broadband at speeds close to the Commission’s 4 Mbps downstream/1 Mbps upstream benchmark at prices ranging from \$45 to \$49.95 per month. Would setting a reasonable comparability benchmark for broadband service at a somewhat higher level, such as \$60, be a reasonable approach for determining who is an unsubsidized competitor when identifying census blocks that would be excluded from the state-level offer of support in Phase II? Should that figure be lower or higher?

13. With respect to the Commission’s usage requirement, we propose to set a uniform minimum usage allowance that would apply both to price cap carriers that make a statewide commitment as well as to unsubsidized competitors that would preclude a census block from being funded. We seek comment on this proposal.

14. We propose to adopt a minimum usage allowance for purposes of finalizing the locations that will receive support to be offered to price cap carriers in Connect America Phase II. This minimum usage allowance would be associated with the rate established for the reasonable comparability benchmark for broadband service; consumers in supported areas would be free to purchase additional gigabytes of data above the required minimum usage allowance. We seek comment on this proposal.

15. One way to set a minimum usage allowance would be to estimate the amount of data needed to accomplish various user activities that the Connect America Fund will advance. A similar approach was used to set the minimum broadband speed requirements for Connect America. Chart 1 below provides estimates of what activities are possible under varying data allowances, taking into account potential activities relating to education, health, employment, e-commerce, and civic engagement. Chart 1 shows the cumulative illustrative activities a household could undertake under various data allowances. We seek comment on this analysis.

Chart 1						
Critical Use Category	Activity	Data Allowance				
		20 GB	40 GB	60 GB	80 GB	100 GB
Online College Coursework	Hours per week of interactive video courses	3	6	9	12	15

	Websites loaded per day for course work	45	90	135	180	225
	Emails per day for coursework	20	40	60	80	100
Secondary Schooling	Hours per week of educational video	6	12	18	24	30
	Websites loaded per day for homework or learning management systems	30	60	90	120	150
	Emails per day	20	40	60	80	100
Household's Other Critical Uses	Online medical consultations (30 min.) every two months	1	2	3	4	5
	Websites loaded per day for job searching, government services, news, or banking	55	110	165	220	275
	Emails per adult per day	20	40	60	80	100

16. Given the calculations in Chart 1, would 100 GB be a reasonable upper bound for a minimum usage allowance? Using a higher figure, such as 100 GB, would account for the growth in video usage for education and communication purposes over the next five years. It would also allow for other new and unanticipated uses that Chart 1 does not account for. Alternatively, should we instead adopt a lower value, such as 60 GB, but increase that requirement over time to reflect growing average data consumption, as discussed below?

17. As an alternative to setting the minimum usage allowance based on a set of potential user activities, we could set the minimum usage allowance based on current average usage. We note that according to one source, during the second half of 2012, the median monthly data consumption for fixed services in North America was 16.8 GB per subscriber. According to the most recent Commission speed testing data released in February 2013, the median weighted consumption of volunteers participating in the Measuring Broadband America (MBA) program for all fixed terrestrial technologies was 32.3 GB per month, with approximately 90 percent of surveyed digital subscriber line (DSL) subscribers in September 2012 using less than 100 GB per month. Should we set the Phase II minimum usage allowance based on such data? Given that the vast majority of DSL users in the MBA program today use less capacity than 100 GB per month, would that be an appropriate usage allowance requirement for carriers electing to make a statewide commitment in Phase II and for other providers to be deemed an unsubsidized

competitor? Is such data representative of typical users, and if not, is there an alternative data source we should consider? What would be the implications of setting the minimum usage allowance higher or lower? In particular, what are the technical constraints that limit the capacity providers are able to offer, and what are the factors that would raise or lower deployment costs if we raise or lower the minimum usage allowance requirement? We assume some percentage of an average household's data is consumed in entertainment purposes. Should that be factored into our calculations? To the extent commenters believe the required minimum usage allowance should be higher or lower, they should provide specific data and analyses in support of their positions.

18. Should we set an initial usage allowance that would be required for the first year of Phase II implementation, but require that usage allowance to grow in future years, consistent with the growth in consumer usage observed in the marketplace? We note that Cisco projects that North American consumer usage will grow by 14 percent in 2014, 21 percent in 2015, and 25 percent in 2016. The model developed by Commission staff for the Broadband Plan assumed that customer usage of fixed broadband would grow by approximately 30 percent annually. How could such a requirement be structured to provide sufficient clarity to providers at the time they make a statewide commitment of how their obligations would evolve over time? What objective metric or external data source should determine the growth in usage allowances over time? If we were to adopt such an approach, should the usage level be adjusted annually, bi-annually, or on some other schedule?

19. Latency. The USF/ICC Transformation Order, 76 FR 73830, November 29, 2011, requires ETCs to provide latency sufficient for real time applications, such as VoIP. In adopting this requirement, the Commission noted that broadband testing results showed most terrestrial wireline technologies can reliably provide round trip latency of less than 100 milliseconds (ms). The June 2012 testing results show that the average peak period round trip UDP latency for all wireline terrestrial technologies is less than 60 ms.

20. To implement the Commission's latency requirement when offering support to price cap carriers in Phase II and determining who is an unsubsidized competitor in Phase II, should we establish a specific numerical latency standard? Because performance during peak usage is important to ensuring the consumers have adequate service, we believe a testing under load standard would be appropriate, if we adopt a specific standard. For instance, would it meet the Commission's requirements if an average of 95 percent of all measurements of network round trip latency under load during peak period (defined as weeknights between 7:00 pm to 11:00 pm local time) between the customer premises (or as close to the customer premises as technically possible) to the provider's transit or peering interconnection point (often referred to as an Internet exchange point) were at or below 60 ms? Should that number be set lower or higher, and if so, why? To provide a factual basis for a price cap carrier or potential unsubsidized carrier to establish it is meeting the Commission's requirements, should a latency test be conducted over a minimum of two consecutive weeks during peak hours for at least 50 randomly-selected customer premises using existing network management systems, ping tests, or other commonly available network measurement tools? Should the testing period be longer or shorter? Should the number of customer premise be higher or lower? We seek comment on whether this approach would provide sufficient clarity to potential support recipients and unsubsidized providers regarding their service obligations.

III. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

21. The USF/ICC Transformation Order included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposal. We invite parties to file comments on the IRFA in light of this additional notice.

B. Initial Paperwork Reduction Act of 1995 Analysis

22. This document seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the

requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

C. Filing Requirements

23. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments are to reference **WC Docket No. 10-90 and DA 13-284** and may be filed using the Commission’s Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

24. People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

In addition, we request that one copy of each pleading be sent to each of the following:

(1) Ryan Yates, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 6-B-441A, Washington, D.C. 20554; e-mail: Ryan.Yates@fcc.gov;

(2) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-A452, Washington, D.C. 20554; e-mail: Charles.Tyler@fcc.gov.

25. This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that

proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

FEDERAL COMMUNICATIONS COMMISSION.

Kimberly A. Scardino,
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Wireline Competition Bureau.

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